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SEALAND/NETWORK SPACE CHARTER AGREEMENT

A Space Charter Agreement

FMC Agreement No. 201325

Expiration Date: None

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ARTICLE 1:        FULL NAME OF THE AGREEMENT

The full name of this Agreement is the Sealand/Network Space Charter Agreement (hereinafter referred to as the "Agreement").

ARTICLE 2:        PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize Sealand to charter space to Network in the Trade (as hereinafter defined).

ARTICLE 3:        PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "Party" or "Parties") are:

1.     Maersk        A/S dba Sealand ("Sealand")  
      2810 SW 149<sup>th</sup> Avenue  
      Miramar, FL 33027
2.     Network Shipping, Ltd. ("Network")  
      241 Sevilla Avenue  
      Coral Gables, FL 33134

ARTICLE 4:        GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement is the trade between ports in Ecuador, Panama, Costa Rica, El Salvador, Guatemala, Nicaragua, and Mexico on the one hand and ports in California on the other hand (the "Trade").

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ARTICLE 5:        AGREEMENT AUTHORITY

5.1 Space Charter. Sealand shall charter to Network, and Network shall purchase from Sealand, on a used/unused basis, space for the movement of a total of 60 TEUS or 840 mtons (whichever is used first) on each northbound and each southbound sailing of Sealand's WCCA and WCCA2 services, which allocation shall include 30 reefer plugs. The total allocation shall be divided between the services as the Parties may agree from time to time. Sealand shall provide and guarantee to Network the availability of the aforementioned slots and reefer plugs. The Parties are authorized to discuss and agree on the terms and conditions applicable to the sale and purchase of space, including the amount of slot charter hire. Additional slots may be chartered to Network on an *ad hoc* basis, subject to space availability.

5.2 Use of Space. (a) Network shall not sub-charter or otherwise sell any space received hereunder to any ocean common carrier without the prior written consent of Sealand; provided, however, that Network may sub-charter slots and/or reefer plugs to its vessel-operating affiliates without prior consent. In the event of any sub-charter, Network shall remain fully responsible to Sealand for any breach of its obligations under this Agreement, regardless of whether such breach is committed by a sub-charterer. Any affiliate to which Network sub-charters slots may not further sub-charter such slots. Any sub-chartering arrangement to an affiliate of Network will terminate immediately if the party receiving the slots ceases to be an affiliate of Network.



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(b) Dangerous goods, out-of-gauge cargo, and/or breakbulk cargo will be accepted, subject to Sealand's prior approval based on reasonable operational and stowage constraints and on such other terms as may be agreed by the Parties from time to time.

(c) Network may use the slots and reefer plugs made available under this Agreement for the carriage of cargo and containers between ports in the same region, provided that it does not exceed its agreed allocations, subject to: (i) operational constraints; (ii) time constraints; and (iii) applicable law. If Sealand discovers that Network has loaded in excess of its slot allocation (either in space or by weight), Sealand may require Network immediately to discharge cargo and containers at that or any of the following ports until Network is within its slot allocation. All costs, expenses and delays whatsoever arising from such excess loadings and/or steps taken to reduce such excess loadings as may be required by Sealand, including for extra fuel to make up time lost as a result of such excess loadings, shall be for the account of Network. Network shall pay Sealand the agreed slot charter rate for any excess loadings on board a vessel.

(d) If Network fails to use its allocation of slots and/or reefer plugs in full, Sealand shall be entitled to use such slots and/or reefer plugs free of charge (and without prejudice to Network's payment obligations in respect of the allocation of such slots and/or reefer plugs), provided always that such slots and/or reefer plugs are available for use by Network at each subsequent port of call. Slots and/or reefer plugs shall be deemed to be unused by Network if it has not tendered cargo for such slots



and/or reefer plugs to Sealand's agent before the deadline as determined by the Parties or, where no deadline has been agreed, the relevant agent's general practice and operational procedures. Cargo may be accepted for shipment after this deadline at the sole discretion of Sealand or its agent.

5.3 Vessels. Sealand shall ensure at all times during the term of this Agreement that each of its vessels covered by this Agreement is classed with a classification society that is a member or associate members of the International Association of Classification Societies and is no more than 25 years of age. During the term of this Agreement, Sealand shall procure that both it and its vessels shall comply with the requirements of the ISM code. Upon request, Sealand shall provide a copy of the relevant Document of Compliance (DOC) and Safety Management Certificate (SMC) to Network. Sealand shall be solely responsible for all operational aspects relating to its vessels, including the provision of crew, equipment and supplies (and all husbandry tasks), and maintenance. Sealand may replace any of its vessels in the service with another vessel at any time, provided this does not adversely affect Network's guaranteed slot allocation set forth in Article 5.1 above, or Sealand's compliance with the schedule of the service.

5.4 Schedule. (a) Sealand shall be responsible for maintaining the sailing schedule. Where a vessel is not in compliance with the pro forma schedule, Sealand shall use all reasonable efforts to put the vessel back on schedule as soon as possible. Network shall cooperate in good faith with the relevant vessel provider in order to maintain the schedule.

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(b) The cancellation of any sailings remains at the discretion of Sealand. Any such cancellation shall be notified to Network at least 30 days in advance. When a particular pre-notified sailing is blanked (not provided) and/or when a sailing cancellation (roundtrip or one way) is caused by a force majeure event, the Parties agree that Network will not receive and will not be charged for any allocation of slots on that particular sailing.

(c) Sealand shall have the right to introduce an ad hoc or permanent change to the schedule of the service(s) provided that such change is communicated in writing to Network at least 30 days in advance. If Sealand makes a permanent change to the schedule, Network may terminate this Agreement by giving 30 days' written notice to Sealand at any time before the change to the schedule becomes effective, if such change may have a material adverse effect on the commercial benefits which would reasonably be expected to be gained by Network in the absence of the change being made.

(d) An ad-hoc addition of a port(s) of call may be implemented at the discretion of Sealand, provided always that such call(s) has no effect on the schedule integrity of vessels in the service, including their normal transit times. In the event of an ad-hoc addition of a port(s) of call, Sealand will bear all risk in relation to such deviation, be responsible for all costs which would not otherwise have been incurred, not have the benefit of any limitations or exceptions to liability otherwise agreed by the Parties, and have exclusive rights of discharge/load at the additional port of call. Network may load and/or discharge cargo and containers at an additional port of call with the prior consent of Sealand, provided that the Network waives any right of action against

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Sealand under this Article 5.4(d) and the Parties share all additional costs which are incurred in connection with such port call (including, without limitation, the port and fuel costs) in proportion to their respective number of moves.

5.5 Terminals. Sealand shall select the terminals called by its vessels. Each Party shall negotiate the terms of its terminal contracts separately with the relevant terminal operators. Each Party shall be responsible for stevedoring or other cargo handling or terminal costs and, save where this Agreement provides otherwise, Network shall be responsible for the payment of all expenses arising from the loading, discharging and handling of its cargo and containers on to and from each vessel. Shiftings of containers (including hatchcover moves) shall be for the sole account of Sealand, unless they result from the direct request or operational requirements of Network, in which case Network shall be responsible for such costs. In the event that additional lashers are required other than in connection with Network's cargo, the related costs shall be for Sealand's account. Sealand will also be responsible for the cost incurred in respect of the plugging and unplugging of reefer plugs on board their Vessels.

5.6 Remedies. (a) The Parties are authorized to discuss and agree on remedies for non-performance.

(b) In the event Sealand omits a port for reasons other than those set forth in Article 5.6(c) below, it shall be responsible for the movement of cargo and containers to and from the omitted port as follows: (i) by arranging for the transshipment, feeding and on-carriage of all of Network's cargo and containers on the affected vessel and destined for the omitted port before the port omission was





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made, which (at the option of Sealand) may be by means of the next vessel in the service; and (ii) by compensating Network for the slots it would have used at the omitted port by making available to Network from within its own allocation on the next vessel in the service, such number of slots and reefer plugs as were not made available to Network; or, if the Parties agree, by paying Network a sum equal to the slot cost multiplied by the number of such slots; or a combination of such monetary and space compensation. Notwithstanding the preceding sentence, Network shall not receive compensation for slots and reefer plugs which it is deemed Network would have filled at the omitted port to the extent that it has been able to utilise these slots for other cargo and containers before the vessel's departure from the region.

(c) Notwithstanding Article 5.6(b) above, Sealand shall not be responsible to Network for the omission of a port in the following circumstances, and shall have the right to discharge and unload the cargo and containers from the relevant vessel at the nearest port of convenience which, so far as reasonably practicable, shall be a scheduled port on the service, and each Party shall be responsible for all operational costs incurred in respect of its containers and cargo on board the affected vessel and at the omitted port: (i) berth congestion at the omitted port which is reasonably anticipated to incur a delay of 48 hours or more; (ii) closure of the port or incapacity to operate the vessel in the port due to bad weather, strikes of service providers (such as pilots, tugs and stevedores) or the unavailability of terminal equipment due to breakdown or delay which is reasonably anticipated to incur a delay of 48 hours or more; or (iii) a lawful deviation made for the purpose of saving or attempting to save life or property at sea or a force majeure event (excluding the events in (i) and (ii)

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above). Sealand shall promptly notify Network of any of the above events and consult with Network as to appropriate measures to be taken to minimise costs.

(d) Other than where caused by the omission of a port (in respect of which Articles 5.6(b) and 5.6(c) shall apply) or a force majeure event, if Sealand leaves on the quay some or all of Network's containers or cargo properly programmed for loading within the vessel's call at the terminal, Sealand shall compensate Network by either making available to Network from within its own allocation on the next vessel in the service, the same number of slots and reefer plugs (default remedy); or, if the Parties agree, by paying Network a sum equal to the slot cost multiplied by the number of such unavailable slots; or, a combination of such monetary and space compensation. Notwithstanding the preceding sentence, Network shall not receive compensation for slots and reefer plugs which Network has been able to utilise for other cargo and containers before the vessel's departure from the region.

(e) Notwithstanding Article 5.6(d), when a shut out of Containers is imposed by a terminal or is caused by a force majeure event, Network will carry its shut out containers within its own slot allocation on a subsequent sailing and shall bear all additional expenses related to such shut out containers.

(f) Sealand shall without undue delay inform Network if the relevant vessel leaves a port for any reason before all of Network's containers and cargo which are programmed for loading have been loaded on the vessel.

5.7 Miscellaneous. The Parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the

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implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties; port omission arrangements; stowage planning; record-keeping; responsibility for loss of or damage to cargo and/or containers; insurance; force majeure; general average; salvage; misdeclaration of cargo weight; the handling and resolution of claims and other liabilities; indemnification; documentation and bills of lading; the treatment of hazardous and dangerous cargoes; and the monitoring and handling of and responsibility for reefer containers.

5.8 Further Agreements. Pursuant to 46 C.F.R. § 535.408(b), any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

5.9 Separate Identities/Functions. Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Party shall issue its own bills of lading and handle its own claims. Nothing in this Agreement shall give rise to or be construed as constituting a partnership for any purpose or extent and, unless otherwise agreed, neither Party shall be deemed to be the agent of the other.

ARTICLE 6:            OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda, writings and other communications between the Parties.



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6.2 The following individuals shall have the authority to file this Agreement with the Federal Maritime Commission as well as the authority to delegate same:

- (a) any authorized officer of each of the Parties; and
- (b) legal counsel for each of the Parties.

ARTICLE 7:            MEMBERSHIP AND RESIGNATION

New Parties to this Agreement may be added only upon unanimous consent. The addition of any new Party to this Agreement shall become effective after an amendment noticing its admission has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, as amended. Any Party may withdraw from this Agreement in accordance with the provisions of Article 9 hereof.

ARTICLE 8:            VOTING

Except as otherwise provided herein, actions taken pursuant to, or any amendment of, this Agreement shall be by mutual consent of the Parties.

ARTICLE 9:            DURATION AND TERMINATION OF AGREEMENT

9.1 The effective date of this Agreement is the date on which the Agreement becomes effective under the U.S. Shipping Act of 1984, as amended ("Effective Date").

9.2 The Agreement shall commence on the Effective Date or such later date as the Parties may agree and shall continue indefinitely. Either Party may terminate this Agreement on not less than three (3) months' written notice to the other Party;





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provided, however, that such notice shall not be served prior to 9 months after the Effective Date.

9.3 Notwithstanding Article 9.2, this Agreement may be terminated with immediate effect by one Party if the other Party:

- (a) repeatedly fails to comply with Article 10 (Compliance with Laws) or commits a violation after notice of its failure to comply with Article 10; or
- (b) commits a material breach of this Agreement where such breach has not been remedied to the reasonable satisfaction of the non-defaulting Party within a reasonable period of time, after receipt by the defaulting Party of written notice from the non-defaulting Party requiring such remedy; or
- (c) fails to pay any amount when it becomes due and payable under the terms of this Agreement, where such failure has not been remedied within 10 Working Days of receipt by the defaulting Party of written notice from the non-defaulting Party requiring such remedy; or
- (d) (i) is dissolved; (ii) becomes insolvent or unable to pay its debts as they fall due; (iii) makes a general assignment, arrangement or composition with, or for the benefit of its creditors; (iv) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily; (v) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vi) is affected by any event or act similar to or under which the applicable laws of the jurisdiction where it is constituted has an analogous effect to any of those specified in the sub-clauses (i) to (v) above; or (vii) takes any action in furtherance of any of the foregoing acts (other than for the purpose of the consolidation, reconstruction or amalgamation or previously approved in writing by the other Party).

9.4 Notwithstanding Article 9.2, this Agreement may be terminated as follows:

- (a) if following the outbreak of war (whether declared or not) or hostilities or the imminence thereof, or riot, civil commotion, revolution or widespread terrorist activity, any Party, being of the opinion that the events will render the performance of the Agreement hazardous or wholly or substantially imperilled, can give one month prior notice to terminate the Agreement; or





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- (b) if at any time during the term of this Agreement there is a Change of Control of a Party, and the other Party is of the opinion, arrived at in good faith, that such Change of Control is likely to materially prejudice the cohesion or viability of the Agreement then the other Party may, within 1 month of becoming aware of such Change of Control, give not less than 3 months' notice in writing terminating this Agreement. For the purposes of this Article 9.4(b), a "Change of Control" of a Party shall include (other than as presently exists): (i) the possession, direct or indirect by any person or entity, of the power to direct or cause the direction of the management and policies of the Party or its parent, whether by the ownership and rights of voting shares, by contract or otherwise; or (ii) the ownership by the Party's parent of 50% or less of the equity interest or voting power in such Party, save that the transfer of any shares in a Party or its direct or indirect parent between close members of the same family or between Affiliates shall not constitute a Change of Control.
- 9.5 Notwithstanding the termination of this Agreement in accordance with this Article 9 or Article 5.4(b), the non-defaulting Party retains its right to claim against the defaulting Party for any loss caused by or arising out of such termination.
- 9.6 Upon the termination of this Agreement for whatever cause:
- (a) a final calculation shall be carried out of the amount due (if any) under this Agreement and any amount due to be paid within 30 days of the date of termination if not otherwise due for payment at an earlier time;
- (b) the carriage of cargoes already lifted shall be completed by Sealand by due delivery at the port of discharge; and
- (c) the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued prior to termination.
- 9.7 Any notice of termination served by a Party under this Agreement shall be sent in writing by registered mail to the address of the other Party set out in Article 13.



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ARTICLE 10:      COMPLIANCE WITH LAWS

10.1 The Parties shall comply with all applicable laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to this Agreement, including, to the extent applicable, anti-bribery laws and regulations.

10.2 Each Party shall indemnify and hold the other Party harmless against any losses to the extent incurred as a result of any breach by the indemnifying Party of applicable economic sanctions laws and regulations, including, without limitation, where these are incorporated within United Nations resolutions, European Union regulations, Swiss ordinances and extraterritorial US federal and state laws and regulations (the "Sanctions Laws").

10.3 Each Party warrants that neither it nor any of its affiliates, directors, officers, employees or agents is identified on the U.S. Treasury Department's list of specially Designated Nationals and Blocked Persons (the SDN List) or other sanctions lists.

10.4 Sealand covenants that none of its vessels is identified or otherwise targeted, or owned and/or operated, by any person identified or otherwise targeted by the Sanctions Laws. Each Party covenants that no interest in its cargo and/or containers carried on any vessel is identified or otherwise targeted by the Sanctions Laws.

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ARTICLE 11: GOVERNING LAW AND ARBITRATION

11.1 This Agreement and any dispute or matter arising out of or under this Agreement shall be governed by and construed in accordance with the laws of England and Wales.



11.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Act 1996 together with the London Maritime Arbitrators Association (LMAA) terms, save where the amount in dispute is less than US\$100,000, in which case the LMAA Small Claims Procedure shall apply.

11.3 The Parties agree to appoint a sole arbitrator, having appropriate commercial and consortia experience, within 21 days of any Party seeking an appointment. If either Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on such appointment within 21 days, the LMAA President will appoint a sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of any Party.

11.4 The Parties are authorized to agree upon and follow mediation procedures to be used in attempting to resolve disputes.

ARTICLE 12: ASSIGNMENT

No Party may assign or transfer its rights or obligations under this Agreement in part or in full to any third party without the prior written consent of the other Party,



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which may be withheld for any reason; provided, however, a Party may assign its rights under this Agreement to an affiliate without approval provided that if the assignee ceases to be an affiliate of the relevant Party, the assignee shall, within ten (10) working days of so ceasing, assign its rights under this Agreement to the relevant Party or an affiliate thereof. Subrogation of an insured claim to an insurer shall not constitute an assignment of this Agreement.

ARTICLE 13:      NOTICES

Communication of all written notices required pursuant to this Agreement (other than notice of termination, which will be sent both by email and by courier) shall be sent by e-mail, fax or letter to the following addresses or as otherwise advised:

Sealand:

Sealand  
2810 SW 149<sup>th</sup> Avenue  
Miramar, FL 33027  
Attn: Thiago Covre  
[thiago.covre@sealandmaersk.com](mailto:thiago.covre@sealandmaersk.com)

NETWORK:

Network Shipping, Ltd.  
241 Sevilla Avenue  
Coral Gables, FL 33134  
Attn: Office of General Counsel  
Fax: 1 (305) 448-6647  
[OfficeoftheGeneralCounsel@freshdelmonte.com](mailto:OfficeoftheGeneralCounsel@freshdelmonte.com)

ARTICLE 14:      SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then the said provision shall cease to have effect between the Parties but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

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ARTICLE 15:      VARIATION; WAIVER

No variation or waiver of any of the provisions of this Agreement and no agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless it is in writing and signed by duly authorised representatives of both Parties.

ARTICLE 16:      RIGHTS OF THIRD PARTIES

The Parties do not intend that any term of this Agreement should be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.





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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of this 31 day of October, 2019.

Network Shipping, Ltd.

Maersk Line A/S dba Sealand

By: 

Name: J. A. Lott

Title: SR. V.P. SHIPPING OPS.

By: 

Name: THIAGO GUIMARAES COURE

Title: CHIEF LINE OFFICER